STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 17, 2014
v	No. 313773 Wayne Circuit Court
MARVIN HUGHES, Defendant-Appellant.	LC No. 12-000750-FC

Before: BORRELLO, P.J., and WHITBECK and K. F. KELLY, JJ.

PER CURIAM.

Defendant, Marvin Hughes, appeals by leave granted[1] his convictions, following a plea of *nolo contendere*, of four counts of armed robbery,[2] one count of discharging a weapon at a building,[3] and one count of possessing a firearm during the commission of a felony (felony-firearm).[4] Pursuant to a *Cobbs*[5] agreement, the trial court sentenced Hughes to serve concurrent terms of 7 to 20 years' imprisonment for each armed robbery conviction and one to four years' imprisonment for discharging a weapon at a building, and a consecutive term of two years' imprisonment for his felony-firearm conviction. We affirm.

I. FACTS

A. BACKGROUND FACTS

The prosecutor expressly incorporated the preliminary examination testimony and an investigator's report into the factual basis at Hughes's plea hearing. At the preliminary

[1] *People v Hughes*, unpublished order of the Court of Appeals, entered February 5, 2013 (Docket No. 313773).

[2] MCL 750.529.

[3] MCL 750.234b(2).

[4] MCL 750.227b.

[5] *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

examination, Alaa Naimi testified that he owns Thrifty Scott Market. According to Naimi, on September 30, 2011, after the market closed, two employees that had left the store ran back into the store, pushed by a large man dressed in grey. A second man, dressed in black and carrying a gun, also entered the store. The investigator's report states that the men "announc[ed] a robbery," and one of the men ordered the two employees onto the floor.

Naimi testified that he was in his office. The man dressed in grey drew and pointed a handgun at Naimi's office window and demanded that he open the door. Naimi grabbed his own gun, and fired one shot through a slot in the door. The men retreated and the man in grey fired a shot, which struck a sign. Officer Aaron Colwell testified that he arrested Hughes and his nephew, Lonnie Hughes, at a nearby hospital, where Hughes was being treated for a gunshot wound.

B. PROCEDURAL HISTORY

On April 5, 2012, Hughes pleaded *nolo contendere* to four counts of armed robbery, one count of discharging a firearm in a building, and one count of felony-firearm. At the hearing, the trial court asked Hughes if he understood that "[f]elony[-f]irearm carries with it a mandatory statutory two years in prison that is prior to and consecutive to any other sentence," to which Hughes responded, "[y]es, ma'am." The trial court also asked Hughes if he understood that his preliminary evaluation of sentence length was "7 to 20 years . . . and the two years on the [sic] consecutive and prior to that on the felony firearm . . . ," to which Hughes responded, "[y]es, ma'am." The trial court accepted Hughes's plea. On April 19, 2012, the trial court sentenced Hughes consistent with its preliminary evaluation.

On October 18, 2012, Hughes moved to withdraw his plea on the grounds that (1) he felt coerced into giving the plea because defense counsel informed him he could be sentenced to life in prison if he was found guilty of armed robbery, (2) he did not understand that his sentence would exceed 7 to 20 years' imprisonment, and (3) the facts did not support his armed robbery convictions. Hughes's supporting affidavit stated that Hughes did not understand he would serve a separate two year' imprisonment before serving 7 to 20 years' imprisonment.

The trial court denied Hughes's motion. The trial court found that Hughes understood the consecutive nature of his felony-firearm sentence, his affidavit did not support his allegation regarding defense counsel's advice, and a sufficient factual basis supported his armed robbery convictions. Hughes applied to this Court for leave to appeal, which we granted.[6]

[6] *People v Hughes*, unpublished order of the Court of Appeals, entered February 5, 2013 (Docket No. 313773).

II. MOTION TO WITHDRAW PLEA

A. STANDARD OF REVIEW

This Court reviews for an abuse of discretion the trial court's decision regarding a defendant's motion to withdraw his or her plea.[7] The trial court abuses its discretion when it chooses an outcome outside the range of principled outcomes.[8]

B. LEGAL STANDARDS

When a defendant pleads *nolo contendere*, he or she admits all the essential elements of the crime, and thus admits guilt.[9] A defendant has no right to withdraw a plea once the trial court has accepted it.[10] A defendant who wishes to withdraw his or her plea after sentencing must comply with MCR 6.310(C) and "demonstrate a defect in the plea-taking process."[11]

The focus of a plea proceeding "is to ensure that any defendant who has entered into a sentence agreement has made a knowing, understanding, and informed plea decision."[12] A failure to inform the defendant of the consequences of his or her plea constitutes a defect in the plea-taking process because the plea is not an understanding plea.[13]

C. FACTUAL BASIS

Hughes contends that the factual basis was insufficient to support his plea because he did not complete a larceny or have the intent to commit a larceny. We disagree.

An armed robbery occurs when the defendant, "in the course of committing a larceny . . . assaults or puts the person in fear," and possesses a dangerous weapon or causes a person to believe that he or she possesses a dangerous weapon.[14] "'[I]n the course of committing a

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[7] *People v Fonville*, 291 Mich App 363, 376; 804 NW2d 878 (2011).

[8] *Id.*; *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

[9] *People v Patmore*, 264 Mich App 139, 149; 693 NW2d 385 (2004), lv den 473 Mich 884 (2005).

[10] *Id.*

[11] MCR 6.310(C); *People v Brown*, 492 Mich 684, 692-693; 822 NW2d 208 (2012).

[12] *Brown*, 492 Mich at 693 (quotation marks and citation omitted).

[13] *Id.* at 694.

[14] MCL 750.529; MCL 750.530.

larceny' includes acts that occur in an attempt to commit the larceny . . . ."[15] The defendant need not complete the larceny to commit an armed robbery.[16]

Here, Hughes and Lonnie Hughes entered the Thrifty Scott Market armed with guns, and either Hughes or Lonnie Hughes announced a robbery. The factual circumstances at the plea hearing showed that Hughes possessed a weapon and assaulted the employees while attempting to commit a larceny. While there is no evidence that Hughes actually stole anything, a completed larceny is not an element of armed robbery. Thus, we conclude that the facts sufficiently supported Hughes's plea.

We decline to review whether the facts supported conviction of only a single count of armed robbery. A defendant may not raise on appeal an issue regarding the withdrawal of his or her plea that the defendant did not raise in his or her motion before the trial court.[17] Here, Hughes contended below that the factual basis of his plea was insufficient because he did not complete a larceny. Hughes did not contend that the factual basis was insufficient regarding the number of victims. Therefore, Hughes may not raise this issue on appeal, and we will not review it.

D. INEFFECTIVE ASSISTANCE

Hughes contends that the trial court abused its discretion when it denied his motion to withdraw his plea because counsel's inaccurate statement of his maximum sentence deprived him of the effective assistance of counsel. We disagree.

The right to effective assistance of counsel extends to plea proceedings.[18] A defendant challenging a plea on the basis of ineffective assistance of counsel must show (1) that counsel's representation fell below an objective standard of reasonableness, and (2) that counsel's ineffective assistance prejudiced the defendant.[19] The defendant must overcome the strong presumption that defense counsel's performance constituted sound trial strategy.[20]

Here, Hughes stated in his affidavit, "I felt coerced into taking the plea when my attorney told me I could get life if I lost the trial." Armed robbery is "punishable by imprisonment for life or for any term of years."[21] Therefore, even if defense counsel informed Hughes that he could

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[15] MCL 750.530(2).

[16] *People v Williams*, 491 Mich 164, 171-172; 814 NW2d 270 (2012).

[17] MCR 6.310(D); *People v Kaczorowski*, 190 Mich App 165, 172-173; 475 NW2d 861 (1991),

[18] *Lafler v Cooper*, 566 US ___; 132 S Ct 1376, 1384; 182 L Ed 2d 389 (2012).

[19] *Id*. See *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

[20] *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997); *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007).

[21] MCL 750.529.

receive a sentence of life imprisonment, defense counsel's statement was not factually inaccurate. Hughes has simply failed to demonstrate that counsel made an error. Therefore, the trial court did not abuse its discretion when it denied Hughes's motion to withdraw his plea on this ground.

E. UNDERSTANDING AND VOLUNTARY PLEA

Hughes contends that the trial court abused its discretion when it denied his motion to withdraw his plea because he misunderstood his sentence, and thus his plea was not understanding or voluntary. We disagree.

A defendant may not claim that he or she was confused about the consequences of a plea when the defendant states on the record that he or she understands the sentence agreement.[22] Here, Hughes twice responded "[y]es, ma'am" when asked whether he understood that he would serve his two-year felony-firearm sentence prior and consecutive to his other sentences. Hughes may not now contend that he failed to understand his sentence agreement.

III. CONCLUSION

We conclude that the trial court did not abuse its discretion when it denied Hughes's motion to withdraw his plea. We also conclude that the trial court's decision was not outside the principled range of outcomes because the facts sufficiently supported Hughes's plea to armed robbery, counsel did not ineffectively assist Hughes, and Hughes stated on the record that he understood his plea. Thus, Hughes has failed to demonstrate a defect in the plea-taking process.

We affirm.

/s/ Stephen L. Borrello
/s/ William C. Whitbeck
/s/ Kirsten Frank Kelly

[22] See *People v Everard*, 225 Mich App 455, 460-461; 571 NW2d 536 (1997).